In the High Court of Judicature at Madras

Dated: 19/10/2004

Coram

The Honourable Mr.Justice R.BALASUBRAMANIAN
and
The Honourable Mr.Justice N.KANNADASAN

Criminal Appeal No.741 of 2002

1.Sadayandi (a) Jayaraman
2.Murugan
3.Damodaran
4.Narayanan
5.Rajeev Gandhi
6.Kumar (a) Senthil Kumar ..Appellants

-Vs-

State by Inspector of Police
Kurinjipadi Police Station
Cuddalore District. ..Respondent

APPEAL under Section 374 of the Criminal Procedure Code against the convictions and sentences made in S.C.No.50 of 2001 on the file of the Additional District Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore dated 15.5.2002.

For Appellants : Mr.S.Ashok Kumar, SC for Mr.K.N.Basha

For Respondent : Mr.E.Raja, APP

:JUDGMENT

(JUDGMENT WAS DELIVERED BY R.BALASUBRAMANIAN,J)
Accused 1 to 6 in S.C.NO.50 of 2001 on the file of the Additional Court of Sessions-cum-Chief Judicial Magistrate, Cuddalore are the appellants in this appeal. They are challenging the conviction made against them, the details of which are given here-under in the above referred to sessions case, by filing this appeal. Heard Mr.S.Ashok Kumar, learned Senior Counsel appearing for the appellants and Mr.E.Raja, learned Additional Public Prosecutor for the State.

2. The following are the charges framed against the appellants :
"i. Section 148 IPC - A1 to A6;
ii. Section 324 IPC - A1 to A4 with reference to the injuries stated to have been caused by them on PW1;
iii. Section 324 IPC A3 and A5 with reference to the injuries

stated to have been caused by them on PW2;
iv. Sections 302 read with 34 IPC A3 and A6 for causing the death of one Kumarasamy;
v. Sections 302 read with 149 IPC A1, A2, A4 and A5."
On the accused denying the charges as false and contrary to facts, the trial went on, by the prosecution examining PWS 1 to 19 and marking ExP1 to ExP17. The defence marked ExD1 and ExD2 with no oral evidence on their side. MOS 1 to 6 came to be marked. On the conclusion of the trial, the learned trial Judge found all the charges proved and convicted and sentenced each of the respective accused to undergo rigorous imprisonment for one year together with a fine of Rs.1,000/- carrying a default sentence (A1 to A6) for charge No.1; to undergo rigorous imprisonment for one year together with a fine of Rs.1,000/- carrying a default sentence (A1 to A4); to undergo rigorous imprisonment for one year with a fine of Rs.1,000/- carrying a default sentence (A3 and A5); to undergo imprisonment for life with a fine of Rs.5,00

0/- carrying a default sentence (A3 and A6); and acquitted A1, A2, A4 and A5 on charge No.5. The sentences were directed to run concurrently. As already stated it is this judgment that is in challenge in this appeal.

3. The prosecution case is that due to prior enmity at about 3.30 PM on 27.12.1999 the accused as referred to above being the members of an unlawful assembly caused injuries on PWS 1 and 2 besides causing injuries on Kumarasamy, who breathed his last on 12.1.2000. To substantiate their case the prosecution examined PWS 1 to 4 and 6 as eyewitnesses to the occurrence. The evidence of PW1 who had lodged ExP1 the complaint before PW18 the Sub.Inspector of Police is as hereunder :
"Kumarasamy (since deceased) is his uncle; the witnesses and the accused are belonging to the village Kalkunam and they reside in the same street, namely Perumal Koil Street; A2 is the nephew of A1; A3 to A5 are related to A1; A6 is A1's friend; PW10 is the son of the deceased; on 25.12.1999 at about 4 PM, PW10 was riding a bicycle with the mother-in-law of one Nandagopal as his pillion rider; struck in sand spread in the road and they fell down resulting in an injury to the pillion rider; seeing that incident, A2, A3, A5 and A6 laughed; PW10 informed this to PW1 and others; immediately PW1, PW10 and others questioned A2, A3, A5 and A6 as to why they laughed on the fall of PW1 and the pillion rider of his bicycle; this was followed by a wordy quarrel and they were separated; on the day of occurrence PW1 proceeded to Kurinjipadi in his TVS 50 motor cycle with his mother PW6 seated on the back; as they were near the house of Thangaraj (not examined), all the six accused came; A6 was armed with an iron pipe; A3 with a stick; and A1 and other accused were each armed with iron pipes; they challenged him about the previous day quarrel and A1 attacked PW1 on his right ring finger followed by A2 attacking with an iron pipe; this was followed by A3 attacking with stick on the right hand wrist while A4 with the iron pipe beat him on his left thigh; Kumarasamy (since deceased) intervened and A6 stating that with that blow he must be finished of, hit him on his left side head and A3 with a stick hit on the right cheek of Kumarasamy; Narayanan PW2 questioned and A5 with the iron pipe hit him on his left side head followed by another assault on his right hand; A3 also attacked PW2 on his right shoulder; the occurrence was witnessed by PW2, PW3, PW4 and PW6; Kumarasamy was lying on the ground

profusely bleeding from his head and by his side PW2 was also lying down; the injured were taken in a tyre cart to the hospital and at 7.30 PM, PW1 gave the complaint in the investigating police station; he was afraid to go to the police station immediately and thereafter he reached the police station only at 7 PM with his friends; with the help of pettyshop owner opposite to the police station, he got the complaint reduced into writing which he presented to the police station and it stands marked as ExP1; he was sent to the Government Hospital at Kurinjipadi with the police medical memo where the doctor (PW12) examined him; it was 8.30 PM on that day and on the next day at about 3 PM he was transferred to the Government Headquarters Hospital at Cuddalore for better treatment where he was admitted as an inpatient; Kumarasamy was transferred from the Headquarters Hospital at Cuddalore to Government Hospital, Chennai where he died 15 days later; MO1 was the weapon in the hands of A1 and MO2 was the weapon in the hands of A6."

4. Regarding the occurrence proper, there is a parrot like repeating of the evidence of PW1 by PW2, PW3, PW4 and PW6. PW18 is the Sub. Inspector of Police on duty in the investigating police station on the day of occurrence. At about 8.30 on that day when he was in the police station PW1 appeared before him and gave a written complaint which he registered in his police station Crime No.551 of 1999 for offences under Sections 147, 148, 341, 324, 323 and 307 of the Indian Penal Code. ExP14 is the printed first information report prepared by him. He sent the material records to the Court of Judicial Magistrate No. III at Cuddalore as well as to the higher officials. He assisted the Investigating Officer (PW19) in the investigation. He sent the injured Ragupathy (PW1) with a medical memo bearing NO.85/99 to the hospital for treatment.

5. PW19 is the Investigating Officer in this case. At 8 PM on 27.12.1999 he collected the material records and commenced the investigation. He reached the scene of occurrence at 8.30 PM and in the presence of PW7 and another he prepared ExP2 – observation mahazar. ExP15 is the rough sketch prepared by him. Through PW11 the photographer he caused photographs of the scene of occurrence to be taken and MO3 series are the photographs and MO4 series are the negatives. At 9 PM in the presence of PW7 and another he recovered blood stained earth and sample earth – MOS 5 and 6 under ExP3. He examined PW3, PW4, PW10, PW7 and others and recorded their statements. He examined PW2 in the Government Headquarters Hospital at Cuddalore. He examined PW1 in the Government Primary Health Centre at Kurinjipadi and recorded his statement. He examined further witnesses on 29.12.1999 and recorded their statements. At 9.30 AM on 29.12.1999 he arrested A3 and A5 near a kalyana mandapam at Vadalur and brought them to the police station at about 2.30 PM. At 7 PM on the same day near Mariamman temple of Reddipalayam he arrested A1 and A6. On examination A1, in the presence of PW7 and another, gave a voluntary confession statement, the admissible portion of which is ExP4. Pursuant to ExP4, MO1 came to be recovered under ExP5 attested by the same witnesses. The accused were sent for judicial remand. He sent the recovered incriminating objects to the Court. He came to know that at 2.45 PM on 12.1.2000 Kumarasamy breathed his last in the Government Hospital, Chennai and accordingly altered the section of offence already registered by adding the offence under Section 302 and prepared the altered first information

report ExP16. PW16 is the Constable attached to the Police Out Post to the Government Hospital, Chennai and he passed on the death intimation ExP13 over telephone to PW18 - the Sub.Inspector of Police in the investigating police station. PW19 went to the Government Hospital, Chennai on 13.1.2000 and in the presence of panchayatdhars and witnesses he conducted inquest over the dead body from 10.30 AM and prepared ExP17 the inquest report. Then he gave a requisition through his police constable PW17 for conducting post mortem.

6. PW17 - the Head Constable attached to the investigating police station carried the requisition given by PW19 to the doctor and identified the dead body. He was present through out post mortem. PW15 is the doctor who conducted autopsy on the dead body on receipt of requisition ExP11 sent by PW19 through PW17. She commenced post mortem at 3.30 PM on 13.1.2000 during which she found various symptoms as noted by her in the post mortem report, namely ExP12. The symptoms noted by her are as here-under :
"External injuries :
On examination I found an inverted 'U' shaped infected surgically sutured wound seen over left side tempero parietal regions of scalp.
On examination I found the following internal injury :
On removal of the sutures in the above said injury NO.1 sub.scalp hame atoma over the left side front to parietal regions noted. The underlying lacerated dura matter seen with the absence of the underlying fronto parietal bone. Extra dural blood clot of about 10 gms noted in the above said regions. Small pieces of bone bits 1 X 1/2cm were seen embedded in the substance of fronto parietal lobes of brain. Communuted fracture of remaining left side fronto parietal bones and base of skull involving the anterior and middle cranial fossae.
Heart : All chambers contained fluid blood coronary vessels narrowed due to atherosclerosis. Great vessels atherosclerosed.
Lungs : congested. Hyoid bone : intact. Stomach : contained 100 ml of brown fluid. Mucosal pale. Bladder : empty. Liver spleen & kidneys : congested."
The doctor is of the opinion that the deceased would appear to have died due to complications of head injuries sepsis. After post mortem PW17 handed over the dead body to the relatives and he was examined on 7.2.2000 by PW19.

7. PW19 continued the investigation further by examining the witnesses and recording their statements. PW5 had been examined to speak about the occurrence that is said to have taken place on 25.12.1999. PW7 is the witness to the preparation of ExP2 observation mahazar. PW8 witnessed the arrest of A1 and A6; recording confession statement of A1 the admissible portion of which being ExP4 and recovery of MOS 1 and 2 under ExP5. PW9 is another son of the deceased. His evidence is that he was in the garden lands on 27.12.1999 and on coming to know about the incident he reached the scene of occurrence where he found his father lying just opposite to the house of Thangaraj with bleeding injuries and he was not able to talk. He would further state that he also noticed PW2 lying nearby with bleeding injuries and PW1 was also there with a bleeding injury on his hand. He would also state that he transported his father and PW2 in a tyre cart to Kurinjipadi from where he hired a taxi and took both of them to the Government Headquarters

Hospital, Cuddalore. He reached the hospital at about 5.4 5 PM on the same day. He would further depose that PW2 was admitted as an inpatient and Kumarasamy was advised to take treatment in the Government Hospital, Chennai. Accordingly, he took his father to Chennai where his father was admitted as an inpatient at about 2 AM in the following morning and that his father died 13 days after such admission.

8. PW10 had been examined to speak about the occurrence that had taken place on 25.12.1999. PW11 is the photographer who had proved MO3 series photographs and MO4 series negatives. PW12 is the Casualty Medical Officer in the Government Primary Health Centre of Kurinjipadi before whom at about 8 PM on 27.12.1999 PW1 appeared with the police medical memo. He examined PW1 and at that time PW1 told him that at about 3 PM on the same day he received injuries at the hands of four known persons by use of iron pipes. He noticed various symptoms as noted by him in ExP6 - the accident register. The injures are as follows :
"a. A lacerated injury 2 X 1 X 1 cm in the right ring finger;
b. Contusion 4 X 2 X 5 cm in the right wrist; and
c. Contusion 4 X 2 cm in the left hip and left thigh"
and the injuries are stated to be simple in nature. According to him the injuries could have been caused in the manner and at the time alleged. PW1 was referred to Government Headquarters Hospital where XRay was taken and no fracture was disclosed. ExP7 is the wound certificate given by him for PW1.
9. PW13 is the Casualty Medical Officer in the Government Headquarters Hospital at Cuddalore and at 5.40 PM on 27.12.1999 Thangamani, S/O Kumarasamy brought Kumarasamy before him complaining that his father was attacked by six known persons at about 3 PM on the same day with knife. PW13 on examination found Kumarasamy unconscious and he noticed on him the following injuries :
"a. Cut injury 12 X 2 X 1 cm (lt) scalp bleeding; and
b. Rt.eye blackened."
ExP8 is the wound certificate given by him. PW13 also examined PW2 on the same day brought by Thangamani and on examination he was told that at 3 PM on the same day he received injuries at the hands of six known persons by the use of knife and `iron rods. The patient was conscious and on him he found a cut injury 4 X 1/2 X 1/2 cm scalp and contusion injury right arms and left leg and right scapula. ExP9 is the wound certificate given by him for PW2. At 3.20 PM on 28.12.1999 PW1 appeared before him with the case records at the Government Primary Health Centre, Kurinjipadi and on examination he found him to be conscious and he gave ExP7 medical record for him.

10. PW14 is the Assistant Professor of Medicine in the Government Hospital at Chennai and at about 1.40 hours on 28.12.1999 a person called Thangamani brought his father, namely Kumarasamy for treatment stating that his father was assaulted by known persons by use of knife and iron pipes at about 3 PM on 27.12.1999 and that the injured was referred to the Government Hospital at Chennai by the Government Headquarters Hospital at Cuddalore. He would state that he admitted him as an inpatient and issued ExP10 the accident register.

11. PW19 continued the investigation further by examining all the

witnesses referred to above and other witnesses and recording their statements. After completing the investigation he filed the final report in Court on 15.3.2000 against the accused for offences under Sections 148, 324, 302 read with 149 of the Indian Penal Code. A2 surrendered in Court on 20.1.2000 and A4 surrendered in Court on 25.4.2000. All the accused, when questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against each one of them, denied each and every circumstance as false and contrary to facts. They neither let

in any oral evidence nor documentary evidence. As already stated the learned Sessions Judge found them guilty of the offences as referred to above and convicted them.

12. Learned Senior Counsel appearing for the appellants would submit the following points for consideration :
Though the complaint had come to be registered in this case within four hours after the occurrence, yet on the facts of this case the delay assumes considerable importance. If that is taken note of, this Court should doubt the entire prosecution case. In elaborating this learned Senior Counsel would submit that admittedly PW1 reached the police station at 4.30 PM on the day of occurrence and there is no reason as to why the complaint stated to have been narrated by him orally was not recorded by PW18. Therefore there is every possibility of suspecting the very origin of ExP1. To attack ExP1 on the line indicated above learned Senior Counsel would also submit that the oral evidence of the injured witnesses before the Court (PWS 1 and 2) with the corresponding medical evidence supported by contemporary records prepared run contra to the overt acts attributed to the accused in ExP1 and therefore there is every reason for this Court to come to a conclusion that ExP1 should not be and ought not to be the earliest complaint. If that is so then this Court would be in a position to agree with him that PW1 reached the police station on the day of occurrence at 4.30 PM and gave a complaint and since the averments in that complaint run contra to the case of the prosecution, it had been suppressed. Next it is submitted by the learned Senior Counsel that on the evidence of PW19 it is clear that there was a case and counter and in such cases the prosecution is duty bound to place before the Court all the materials relating to the counter case, namely the case registered in Crime No.550 of 1999 on the file of the same police station, so that the Court would be in a position to appreciate and find out where lies the truth. Therefore there is a deliberate omission in this case in with-holding these relevant materials and this would enable this Court to draw an adverse inference against the prosecution case. On the whole his submission is that though there are injured eyewitnesses, yet when ExP1 could be doubted as not the origin, then this Court would be justified in disbelieving the evidence of PWS 1 and 2 and other eyewitnesses about the manner and time at which the occurrence is show to have taken place and such benefit of doubt should be given to the accused.

13. Learned Additional Public Prosecutor in answer to these points would submit that the complaint in this case had come to be given within four hours from the time of occurrence and on the facts of this case, especially

when there is the solid evidence of PWS 1 and 2 – the injured eyewitnesses, the delay pales into insignificance. The evidence of PWS 1 and 2 and other eyewitnesses are cogent and convincing which was accepted by the Sessions Court on proper appreciation and therefore there is no reason at all as to why this Court should disbelieve their evidence to come to a different conclusion. Lastly it is submitted by the learned Additional Public Prosecutor that the Investigating Officer had fairly admitted in his evidence that the complaint stated to have been given by the accused; and registered; the investigation done by him; and the final report filed. Therefore it cannot be said that the prosecution is guilty of suppressing any relevant material from the purview of this Court. It is his further submission that on the evidence of PW19, it cannot be said that the prosecution had suppressed the truth which has caused any prejudice to the accused.

14. Having regard to the above points submitted by the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor for the State we went through the evidence let in by the prosecution before the Court with utmost care and caution. It is no doubt true, as submitted by the learned Additional Public Prosecutor that the evidence let in by the prosecution includes the evidence of two injured eyewitnesses, namely PWS 1 and 2 besides PWS 3, 4 and 6. The injuries suffered by PWS 1 and 2 stand corroborated by medical evidence and therefore unless exceptional circumstances are made out, it would not be possible for this Court to disbelieve the evidence of PWS 1 and 2. Learned Additional Public Prosecutor, as already stated is right in the above submission. However this submission is subject to a rider, namely that everything is well with the case of the prosecution. If this Court finds, on scanning the materials, any suspicious circumstances which are substantial in nature, then this Court cannot close its eyes to the said circumstances and just accept the evidence of the prosecution witnesses solely on the ground that among them a few are injured eyewitnesses. Therefore the approach of the Courts in such circumstances should be to have caution in mind and to have dispassionate approach. Having that in our mind, as already stated we scanned the materials placed before the Court.

15. Since the very first attack to the prosecution case is directed against ExP1 – the complaint, we are inclined to appreciate that point first which would enable us to proceed further in deciding the controversy in this case. Repeatedly the Supreme Court, this Court and other High Courts have laid emphasis on the value of the earliest information lodged before the police at the earliest point of time. The emphasis is that the earliest information will be devoid of any falsity. In other words it would disclose a true version of the prosecution case and there is no scope for any deliberation or omission or additions at the earliest point of time. The entire prosecution case starts from that platform (i.e.) the complaint with the police. Therefore there cannot be any doubt that the complaint lodged at the earliest point of time is the very fulcrum on which the entire edifice of the prosecution case revolves. Only in this context, the Courts have been repeatedly holding that not only there should not be a delay in giving the complaint but also there should not be any delay in sending such complaint to the Court. As already stated, so much of importance and evidentiary value is

given to the earliest information to decide the credibility of the prosecution case when it is tested before Court at a later point of time. There is no doubt in this case that the occurrence took place at 3.30 PM on 27.12.1999. In this case the complaint ExP1 with the printed first information report ExP14 had come to be registered at 7.30 PM on 27.12.1999. The printed first information report shows that the police station is 5 KM south of the place of occurrence. In normal circumstances, the delay of four hours in lodging the complaint, if there are no suspicious circumstances, would not have been taken serious note of. But in this case the issue is not as simple as that and we reflect our mind on the above issue as here-under:

16. It has come out in evidence of PW1 that to reach Cuddalore from Kalkunam one has to go through Kurinjipadi Police Station (investigating police station). It has also come out in evidence that injured Narayanan and Kumarasamy (since deceased) were originally transported in a tyre cart from Kalkunam in which they reached Kurinjipadi where a taxi was hired in which the injured was taken to the hospital at Cuddalore. PW1 admits that from the junction of Kurinjipadi which they reached from Kalkunam the police station is 100 ft.away. PW9 also would admit in his evidence in cross that from that junction the police station is 1 KM away and next to the police station there is the Government Hospital at Kurinjipadi. We are not saying for a minute that in every case, before reaching the hospital the complaint should be lodged with the police since it depends on the facts of each case. In some cases, the condition of the injured may be very serious and therefore the relatives or anybody accompanying the injured might be very anxious to take them to the hospital at the earliest point of time and in such a situation they cannot be found fault with for not giving the complaint in the police station first and then going to the hospital. Therefore we are not finding fault with PW9, when he transported both the injured Narayanan and Kumarasamy (since deceased) from Kalkunam in a tyre cart first to Kurinjipadi where he changed the mode of transport to reach Cuddalore, in not giving the complaint first at the police station. But in this case besides PW9 we have PW1 an able bodied young man aged about 23. There is no reason at all as to why he did not choose to give the complaint before the police station at the shortest possible time. He explains the delay by saying that as he was already beaten he was afraid to go to the police station immediately. Alright we are prepared to accept this as the immediate reaction of PW1 in not reaching the police station immediately. However he would admit in his evidence that all his friends reached home at 4 PM and he reached the police station by 4.30 PM with his friends in his TVS 50 motor cycle. Therefore the fact remains that PW1 reached the police station within one hour after the occurrence on the day in question, namely 4.30 PM on 27.12.1999. His further evidence is that there was a pettyshop owner near the police station and he waited for his arrival and since even by that time the pettyshop owner did not arrive he went to the doctor PW12 (Government doctor at Kurinjipadi) on his own and PW12 advised him to go to the police station and come back with the medical memo. He would further admit that the police station is half a furlong away from the hospital and he once again reached the pettyshop only at 7 PM. He categorically admits in his evidence in cross that he told the Sub.Inspector of Police (PW18) in the investigating police station at 5 PM on the day of occurrence about the incident and the Sub.Inspector advised him to bring a written complaint. PW18

deposed that PW1 appeared before only at 7.30 PM. Therefore there are two sets of evidence available before this Court, namely PW1 on the one hand stating that when he reached the police station at 5 PM where he told the officer in-charge of the police station about the occurrence; and PW18 stating that he saw PW1 only at 7.30 PM on the day of occurrence. When a question was put to PW18 about PW1 appearing before him much earlier to 7.30 PM, he would answer in the negative. Therefore when there are two sets of evidence as referred to above is available on a point and when the prosecution had not chosen to re-examine PW1 on his evidence that he went to the police station at 5 PM for giving the complaint and the Sub.Inspector of Police advising him to go and get a written complaint, we are inclined to lean towards the accused by accepting the evidence of PW1 that he reached the police station at 5 PM; appeared before the Sub. Inspector of Police; and gave the complaint.

17. Under Section 154(1) of the Code of Criminal Procedure a mandatory duty is cast upon the officer incharge of the police station that whenever information relating to the commission of a cognizable offence is given orally he shall reduce the same into writing or under his direction and then read over the same to the informant. When that is the legal mandate, we fail to understand as to how the officer incharge of the investigating police station can refuse to reduce into writing the complaint given by PW1 and instead of directing him to give a written complaint. Assuming that the officer incharge of the police station informed PW1 to do so, yet we fail to see as to why PW1 did not give any written complaint immediately especially when he admits in his evidence in cross that he had studied upto tenth standard and that he can write well in tamil. Therefore the competency of PW1 to write down such a complaint has been established. If that is so, then we see no reason as to why PW1 waited for the arrival of the pettyshop owner to write a complaint and present before the police. The said person, namely the person who reduced into writing the complaint stated to have been given by PW1, had not been examined. Therefore we have the least hesitation even at this stage to say that registering of ExP1 in the manner and at the time as spoken to by PW18 is surrounded by suspicious circumstances which are substantial in nature. From yet another angle we can have a look at ExP1 to find out the truth or otherwise of the same. In ExP1 the informant, namely PW1 had categorically stated that as far as he is concerned A1 attacked him on his right hand ring finger by iron pipe; intervening Kumarasamy (since deceased) was attacked by A6; and PW2 was attacked by A5. There cannot be any doubt that PW1 must be definitely knowing his assailants at least. Therefore it is clear that in ExP1 for the injuries caused on PW1, PW2 and Kumarasamy, individual overt acts have been attributed to three named accused only. It is not in dispute and it is not denied that when the police officer incharge of the police station registered the complaint and if there are any injured at that time in the police station he would have sent some of them to the hospital with the police medical memo. The medical memo would give the details of persons sent and crisp details of the identity of the assailants, namely whether known or unknown and their numbers. In other words when a medical memo is prepared by the officer incharge of the police station he has a substantive material in the form of complaint before him.

18. PW12 is the doctor who examined PW1 at about 8 PM on 27.12.1999.

The evidence of PW12 shows that PW1 appeared before him with the medical memo and he was informed by PW1, that he came to sustain injuries at the hands of four known persons by the use of iron pipe at about 3 PM on the same day. The said details are also found reflected in ExP6 the accident register a contemporaneous record. PW13 is another doctor in the Government Headquarters Hospital at Cuddalore before whom Kumarasamy and Narayanan were brought by Thangamani. He would also state that Thangamani informed him that his father, namely Kumarasamy was assaulted by six known persons with knife at about 3 PM on the same day and PW2 informed him that he was likewise assaulted by six known persons by knife and iron pipes at about 3 PM on the same day. ExP8 is the accident register given by PW13 to Kumarasamy. ExP9 is the accident register given by PW13 to PW2. ExP8 and ExP9 show the relevant details (i.e.) number of persons and their identity as known persons. ExP8 and ExP9 are also contemporaneous records prepared by PW13. Therefore at the earliest point of time PW1 stated that he came to be attacked by four known persons by the use of iron pipes; Thangamani informed that Kumarasamy came to be attacked by six known persons by the use of pipe; and PW2 stated that he came to be attacked by the use of knife and iron pipes. Having regard to the averments contained in ExP1 (i.e.) the overt acts attributed to the respective accused for causing injuries on the respective victims, we fail to understand as to how before the doctor totally a different version as to the number of assailants could have come to be given. The reason is obvious and it is as suggested by the learned Senior Counsel appearing for the appellants that there should have been an earlier complaint recorded in this case given by PW1 or by somebody else and only on the details available therein PW12 and PW13 have come to be informed about the number of the assailants. In this context the evidence in cross of PW18 assumes considerable importance. He would state that in respect of the complaint registered in Cr.No.551 of 1999 (the present sessions case) entries are made in the general diary and the details of all the persons injured have not been entered in the general diary. He would also admit that there is an entry in the general diary that injured Ragupathy (PW1) had been sent to the hospital and there is no entry in the general diary that the other injured have been sent to the hospital. He would also admit that in the general diary maintained in the police station there is no entry about the nature of weapon stated to have been used in attacking PW1 and the nature of weapon stated to have been used in causing the injuries to others. PW9 would depose that at the scene of occurrence he saw PW1 and he took PW2 and Kumarasamy in a tyre cart to the hospital. In ExP1 this relevant material is not disclosed. Therefore on a reading of the evidence of PW1 , PW18, PW12 and PW13 in the context of contemporaneous records it is clear to our mind that ExP1 might not be the earliest information and that it is not possible to eliminate the case put forward before this Court by the learned Senior Counsel appearing for the appellants with the materials available on record that there should have been an earlier complaint and since it is found to be destructive to the case of the prosecution, they have projected the present version as contained in ExP1 as the earliest information. Our conclusion in saying so is based on appreciation of evidence and relevant materials on record and therefore we reiterate our opinion that the registering of ExP1 in the manner and at the time at which it had come to be registered is not free from doubt and there is a lurking suspicion in our mind that there should be definitely an earlier information.

19. The Honourable Supreme Court of India in the judgment in the case of Marudanal Augusti Vs. State of Kerala (AIR 1980 SC 638) held as follows :
"The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R.is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence."
This judgment in our opinion squarely gets attracted to the case on hand. As per our decision if ExP1 would not be the earliest complaint then the prosecution has all the time at their disposal to bring a version to suit to their case. It may be true as suggested by the learned Additional Public Prosecutor that if the prosecution wants to bring any fabricated version they could have very well distributed the overt acts to each of the accused in the very complaint itself as spoken to by the witnesses in Court. We answer this by stating that it is not possible to read as to how a human mind would work in a given situation and the investigating officer cannot be an exception.

Therefore we are not inclined to give any credibility to ExP1 for the reason that if really the prosecution wanted to fabricate they could have given all the overt acts to all the accused as spoken to by the witnesses in the Court.

20. We next go on to the submission of the learned Senior Counsel, namely not producing the complaint registered in Cr.NO.550 of 1999; the materials collected during investigation; and the report prepared by the Investigating Officer before the Court. In this context it is worth noticing the evidence of PW19 □ the Investigating Officer. He had categorically admitted in his evidence in cross that at about 6.30 PM on 27.12.1999 a complaint in Cr.NO.550 of 1999 came to be registered in his police station and the incident in that crime number and the incident given in the complaint ExP1 had taken place at the same time. He would also admit that in the complaint registered in Cr.No.55 0 of 1999 A1's mother is stated to have been attacked and the accused mentioned therein are PW3, Andal, Chandravadhanam and others. Having admitted so in his evidence in cross, he would explain in his reexamination done by the State that the incident registered in Cr.No.550 of 1999 had been referred as a mistake of fact and that incident is only a sequence to the earlier incident in which the prosecution parties had come to be attacked. If that is so we fail to see as to why the complaint given by the prosecution party did not bear the earlier crime number, and in fact it bears only a crime number later in series. We also find that PW19 had not chosen to place the first information report registered in Cr.No.550 of 1999 and the materials collected by him during that investigation, namely the statements of witnesses and the final report before the Court. The Investigating Officer is not a Judge of his cause and he is only authorised to collect the materials and place it before the Court, so that the Court would be in a position to decide which would be the true version.

21. A learned Judge of this Court in the case reported (i.e) Mokkayya Thevar Vs.Amsarajan (1986 L.W.(Crl.) 286) having regard to Section 588-A of the Police Standing Order, held as follows :
"In this case, though a complaint was filed by the accused and another

one at the same time by the complainant regarding the same transaction, and though both of them have been sent by the investigating officer to the medical examination, the investigation officer has not proceeded with the cases according to the instructions given in the Madras Police Standing Orders, noted above. He has simply suppressed one case and it is only at the time of his examination that he cursorily referred to the other case, without explaining why he has chosen the version of PW1 rather than that of the accused. This has made the case of the prosecution extremely weak."

Of course it has been held later on that Section 588-A of the Police Standing Order is not statutory in force, but it is only directory. Nonetheless the importance of placing the entire materials collected in the investigation of the counter complaint c annot be totally lost sight off since in our opinion the Court, which deals with the sessions case relating to murder, would be in a position to appreciate the materials in the proper perspective and come to a just conclusion at the end of the trial. In this case by not placing the materials in the counter complaint not only the accused have been prejudiced but also it disabled the Sessions Court from considering the entire spectrum of the prosecution case. This we are emboldened to say in view of the evidence in cross of PW19 first admitting that the case and counter case related to the same transaction and explaining later in the re-examination that the counter case is only a sequence of the attack of prosecution party in this case. We have no doubt at all that PW19 cannot be a Judge of his own cause and by not placing the relevant materials in the counter case before the learned Sessions Judge, he had disabled the Sessions Judge to appreciate the controversy from a proper angle. A Division Bench of this Court in the judgment in the under mentioned case In re Pedda Venkatanna (AIR 1954 Madras 15) held as follows :

"In a complaint and counter complaint such as this obviously arising out of the same transaction when the prosecution proceeds on the basis of the complaint, we think it is the duty of the prosecution to exhibit the counter complaint through the police officer who recorded it and also to prove medical certificates of persons wounded on the opposite side also and place before the Court a definite case which they ask it to accept. We must deprecate the prosecution in such cases accepting in toto one complaint and examining only witnesses who support it and give no explanation at all for injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the Court to enable it to arrive at the truth and a just decision."

22. For all the reasons stated above we conclude that ExP1 is not the earliest information and that the failure to place before the Court the materials in the counter case had not only prejudiced the accused but also disabled the Court of Sessions from appreciating the case from all the angles. Since we are doubting the very existence of ExP1 as a true document, as held by the Supreme Court in the judgment referred to supra the evidence of eyewitnesses including the evidence of the injured eyewitnesses cannot be taken as totally free from doubt warranting conviction of the accused. It may be true that the occurrence had taken place on the day in question in which PW1, PW2, and Kumarasamy (since deceased) were injured in the prosecution side and A1's mother was injured in the defence side. But the question is whether

the occurrence had taken place only in the manner spoken to by the prosecution witnesses in this case or it had taken place in any other manner. If the materials collected in the counter case had been placed the Court would have been in a better position to appreciate. Though PWS 1 and 2 had come to sustain injuries, yet we are having a doubt in our mind as to whether they would have come to sustain the injuries only in the manner spoken to by the prosecution witnesses. Therefore we are not inclined to accept the evidence of PWS 1 and 2 as gospel truth regarding the occurrence proper. On the same footing, we are also not inclined to accept the evidence of PW3, PW4 and PW6. We have already said that the evidence of PWS 1 to 4 and 6 are parrot like repetition of the various overt acts attributed to the accused which are not in conformity with ExP1. We are also fully aware that every minute details of the manner in which the occurrence had taken place and the manner in which each of the victims came to be attacked need not be mentioned in ExP1 itself. But it depends upon the facts of each case. PW1 at least should be certain about his assailants. The occurrence had taken place in broad day light. Having regard to the doubt which we have entertained regarding the genesis of the prosecution case itself, as stated above, we are inclined to conclude that it would not be safe to accept the evidence of the witnesses.

23. Therefore for all the reasons stated above we have no hesitation at all to conclude that all is not well with the prosecution case and therefore giving the benefit of doubt to all the accused, they are acquitted by setting aside the judgment under challenge. The criminal appeal is allowed. The bail bonds, if any executed by any or all the accused shall be cancelled. A6 is stated to be in confinement and if he is not wanted in connection with any other case, he is directed to be released forthwith. Fine amount, if any paid by any or all the accused is directed to be refunded to them.

Index : Yes
Internet : Yes

To

1.The Judicial Magistrate No.III, Cuddalore.
2.-do- through the Chief Judicial Magistrate, Cuddalore District.
3.The Additional Sessions Judge-cum-Chief Judicial Magistrate,
Cuddalore District.
4.The Principal Sessions Judge, Cuddalore District.
5.The District Collector, Cuddalore.
6.The Director General of Police, Chennai.
7.The Public Prosecutor, High Court, Madras.
8.The Superintendent, Central Prison, Cuddalore.
9.The Inspector of Police, Kurinjipadi Police Station, Cuddalore District.